



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|------------------------------|------------------|
| 10/519,572 | 12/28/2004 | Hermann Grether | SMB-PT121 (PC 03 445 B US | 7694 |
| 3624 | 7590 | 11/03/2008 | EXAMINER | |
| VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103 | | | GORMAN, DARREN W | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3752 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 11/03/2008 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---|--|
| Office Action Summary | Application No. 10/519,572 | Applicant(s) GRETHER, HERMANN | |
| | Examiner Darren W. Gorman | Art Unit 3752 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-67 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2004 and 08 September 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The replacement drawing sheets showing Figures 1, 14 and 15 were received on September 8, 2008. These drawings are not acceptable. The replacement drawing sheets were filed in an effort to overcome the drawing objection under 37 CFR 1.83(a) as set forth in paragraph 2, after the third bullet in the office action mailed April 10, 2008, with respect to the originally filed drawings as not showing the claimed “housing part being braced by longitudinal ridges in the circumferential direction that are distributed in an equal manner”. According to the specification, the “longitudinal ridges” of the device are “arranged in the area of the flow regulator 14 and consequently equally distributed in the area of the discharge opening in the [circumferential] direction (see paragraph [0063]). From this description of the “longitudinal ridges” and from additional description of the ridges in the specification (including the remaining portions of paragraph [0063]), the element(s) designated with reference number “22” in the replacement drawing sheets filed September 8, 2008 cannot possibly be the disclosed and claimed “longitudinal ridges”. Note also that claim 65 goes on to recite that the “longitudinal ridges are provided at least in a discharge opening area”. Reference number “22” added in the replacement drawing sheets clearly does not indicate elements located in what would reasonably be called a “discharge opening area”.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “housing part” being “braced by

Art Unit: 3752

longitudinal ridges in the circumferential direction that are distributed in an equal manner”, must be clearly shown or the feature(s) cancelled from the claim(s). Applicant’s replacement drawing figures add reference number “22” which are supposed to designate these longitudinal ridges, however, as explained above under paragraph 1 of this office action, the element(s) now designated with reference number “22” cannot possibly be the disclosed and claimed “longitudinal ridges”, thus the drawings remain objected to under 37 CFR 1.83(a). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Art Unit: 3752

Minor Claim Suggestions By Examiner

3. The following change(s) are recommended to improve clarity of the claims. The claims have been examined on the merits including the suggested changes below.

Regarding claim 35, on line 4, “and at the least one mounted element” should be amended to read, “and the at ~~the~~ least one mounted element”.

Regarding claim 40, on line 2, “of one of the of the at least one mounted elements” should be amended to read, “of one ~~of the~~ of the at least one mounted elements”.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 40, 54-56 and 61-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 40, the reference numbers (5a, 5c) and (5b, 5e) used in the claim cause confusion when these reference numbers are compared to the drawings. Although reference numbers cannot be used to further limit recited elements in a claim, the use of the reference numbers in this particular claim leads to ambiguity. The elements designated with reference numbers “5a” and “5c”, in every possibly instance as shown in the drawings, are upstream from the elements designated with reference numbers “5b” and “5e”, respectively (see Figures 1, 4 and 8). Claim 40, however, recites that the “passageways” of the “5a, 5c” elements are downstream of the “junction points” of the “5b, 5e” elements. The specification in at least

Art Unit: 3752

paragraph [0056] discloses the same confusing relationship, thus the written disclosure does not lend any clarity to the above issue. It should be noted that although this specific indefiniteness issue was not set forth in the office action mailed April 10, 2008, Applicant's amendments to clarify other indefiniteness issues in the claims exposed this indefiniteness issue. Therefore, this rejection was necessitated by Applicant's amendment.

Regarding claim 54, the recitation, "the at least two housing parts of the mounting housing" lacks antecedent basis. No such "parts" are recited in claim 34.

Regarding claim 55, the recitation, "a housing part" is confusing. There is antecedent basis to a "mounting housing", however no claim in the chain of claims from which claim 55 depends, defines the "mounting housing" as being one with specific "parts".

Regarding claim 56, the claim remains indecipherable. First, the claim is not written in proper sentence form. Second, the recitation with respect to "at least one mounted element of the jet regulating device whose discharge side is insertable into a corresponding housing part..." is completely unclear. What is meant by the "discharge side" being "insertable"? What is the recited "corresponding housing part"?

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3752

7. Claims 34-60 and 64-67 are rejected under 35 U.S.C. 102(b) as being anticipated by Grether et al., USPN 6,152,182.

Grether shows a sanitary component (1, 103, 105, 106, 108, 110) with a jet regulating device (8) mounted in an interior of a mounting housing (2), the jet regulating device including at least one mounted element, each mounting element having ridges (formed on deflector members 9) oriented transverse to a direction of flow, wherein between the ridges, passageways are defined, and wherein the ridges of the mounted elements are arranged in the form of a grid or mesh, which cross at junction points (see Figures 4, 7, 9 and 11). It is noted that, although the drawings of Grether show a plurality of deflector members (see various embodiments throughout Figures 2-11 of Grether), which form the grid, wherein the deflector members are spaced apart in a longitudinal direction of the device, such arrangements are still reasonable to anticipate the claimed arrangement, since the ridges clearly cross each other to form junction points and since passageways are clearly formed between the ridges. It should also be noted that the disclosure of Grether expressly states that the deflectors “are preferably arranged in a grid shape in at least one plane oriented crosswise to the flow-through direction” (see column 3, lines 13-15). Thus, although not clearly shown in any of the drawings, the disclosure of Grether encompasses a jet regulating device where the ridges cross each other at junction points within the same plane to form the grid shape in a single plane.

Grether further shows a jet separating device (5) upstream of the jet regulating device, wherein the jet regulating device is shaped as a perforated plate. In Figure 3, Grether shows that the junction points formed between the first two deflector members align with the junction points formed between the next two deflector members. At least Figure 5a shows at least two elements

Art Unit: 3752

of the jet regulating device having reasonably been constructed in the same way. Grether also shows an embodiment (see Figures 10 and 11) wherein the jet regulating device has a group of radial ridges (22) that cross at junction points with a group of rotary ridges (23) that are concentric in the form of a ring, thus crossing in a radial manner. Grether also shows a flow regulator (25) in at least one of the shown embodiments (see Figures 6 and 10) wherein the flow regulator includes passage openings (26), wherein at least some of the passage openings (at least those in close proximity to the housing constriction 18) exhibit a portion having a smaller opening width than a height thereof in the direction of flow. Further, Grether discloses that the flow regulator passage openings may exhibit at least one of a rectangular, circular-segment or honeycomb shape (see column 13, lines 21-25). Grether also shows and discloses the mounting housing including multiple housing parts (see column 8, lines 36-40), at least two of which are disclosed as “sleeve parts”, and Grether also shows that a housing part is integral with the perforated plate (see Figure 1 – note that the outer rim of the perforated plate 6 forms an exterior portion of what would reasonably be considered part of the housing for the device). Grether also discloses a plug stop in the housing for the jet regulating device (see column 5, lines 26-32). As to the device including at least one metal filter, Grether explains that “mounting of metal flow regulator sieves can be omitted” (see column 2, lines 61-63), however this is enough to reasonably teach that at least one metal filter can be included. Grether also shows a housing constriction (18) in the area of the water discharge opening, and Grether discloses snap-on connection of the housing parts (see column 9, lines 21-26).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grether et al., in view of Flieger, USPN 6,588,682.

Grether shows all of the limitations as set forth in claim 55, however Grether is silent as to including at least one soft and/or water-repellant surface on the housing part in the area of the water discharge opening, or forming the housing part in at least the area of the water discharge opening from an elastic material.

Flieger shows a sanitary component and discloses that other prior art sanitary components are often subject to calcification at their respective water discharge openings. Flieger teaches forming at least the outlet portion of the device from an elastic material, thus permitting a user to easily and effectively clean the outlet portion with a finger tip (see Figure 1 and column 5, lines 30-53), and Flieger also discloses applying a soft and/or water-repellant surface to the outlet portion to substantially prevent wetting of the outlet portion, thus reducing or eliminating calcification (see column 5, line 54 through column 6, line 18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form at least the housing part in the area of the discharge opening of the device of Grether from an elastic material, and/or coat at least the housing part in the area of the discharge opening of the device of Grether with a soft and/or water-repellant surface, as taught

Art Unit: 3752

by Flieger, thus permitting a user to easily and effectively clean the outlet portion with a finger tip, and/or also thereby reducing or eliminating calcification at the water discharge opening.

Response to Arguments

10. Applicant's arguments filed September 8, 2008, see pages 14-15 under the section heading “***Claim Rejections – 35 U.S.C. §102***”, with respect to the prior art of Grether (US Patent No. 6,152,182) in view of the recited claims, have been fully considered but they are not persuasive.

With respect to claim 34, Applicant asserts that “the ‘182 patent fails to show a jet regulating device mounted in the interior of a mounting housing”. As reasonably applied by the Examiner, see paragraph 7 above, the Grether patent includes a “mounting housing” indicated at reference number “2” and a “jet regulating device” indicated at reference number “8”. Clearly, as shown and disclosed by Grether in the ‘182 patent, the element designated with reference number “8” is mounted in an interior of the element designated with reference number “2”. Applicant then goes on to argue that other elements and the interrelationships of those elements as recited in claims 34 and 35 are not shown or suggested in the ‘182 patent. It is the Examiner’s position that the elements and interrelationships thereof recited in claims 34 and 35 as well as the other rejected claims as set forth above under paragraph 7 of this office action, are clearly anticipated by the device disclosed in the ‘182 patent, as applied to the claims in the aforementioned rejection.

Art Unit: 3752

11. Applicant's arguments filed September 8, 2008, see pages 15-16 under the section heading “***Claim Rejections – 35 U.S.C. §103***”, with respect to the prior art of Grether (US Patent No. 6,152,182) in view of Flieger, regarding claims 61-63, have been fully considered but they are not persuasive.

Applicant asserts that Flieger fails to show a housing part having the recited at least one soft or water-repellent surface as claimed in claim 61. It is the Examiner's position that Flieger was and is relied upon by the Examiner to teach locating the recited water-repellent surface(s)/material(s) in the “water discharge opening area”. Since the water discharge opening area of the Grether device is clearly defined at least in part by a part of the housing of the device, then it is irrelevant as to whether or not Flieger specifically shows a housing part having the recited soft or water-repellent surface. One having ordinary skill in the art, with the devices of Grether and Flieger in mind, would be motivated to modify the Grether device to include a water-repellent surface and/or material at the water discharge opening area of the Grether housing, in view of the teaching of Flieger. Further, it is the Examiner's position that the argument with respect to Flieger teaching away from the invention is not relevant with respect to the manner in which the Examiner has applied the modifying reference of Flieger to the reference of Grether in the rejection of claims 61-63.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

Art Unit: 3752

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W Gorman/
Primary Examiner, Art Unit 3752

/D. W. G./
Primary Examiner, Art Unit 3752